

Message Text

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ACTION OES-07

INFO OCT-01 ARA-06 IO-13 ISO-00 FEA-01 ACDA-07 CIAE-00

INR-07 L-03 NSAE-00 NSC-05 EB-07 NRC-05 DODE-00

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FM USMISSION IAEA VIENNA

TO SECSTATE WASHDC PRIORITY 9115

INFO USERDA HQ WASHDC PRIORITY

USERDA HQ GERMANTOWN PRIORITY

AMEMBASSY MEXICO

LIMITED OFFICIAL USE SECTION 1 OF 2 IAEA VIENNA 4106

EO 11652: N/A

TAGS: IAEA TECH PARM MNUC MX

SUBJ: PROPOSED TRANSFER OF RESEARCH REACTOR AND FUEL TO MEXICO

REF: STATE 071924

1. SUMMARY. MISOFF MET WITH IAEA LEGAL DIVISION STAFF MEMBER TO DISCUSS REVISED DRAFT AGREEMENT PROPOSED BY U.S. TO PROVIDE FOR TRANSFER OF RESEARCH REACTOR AND FUEL TO MEXICO. SUBJECT TO INTERNAL CONFIRMATION, AGENCY HAS ACCEPTED U.S. DRAFT PRACTICALLY INTACT, INCLUDING IN PARTICULAR THE PROVISIONS FOR BILATERAL "BACKUP" SAFEGUARDS, EXCEPT FOR REVISIONS DESCRIBED BELOW (MOSTLY EDITORIAL OR STYLISTIC). PRIOR TO TAKING UP MATTER WITH GOM, AGENCY REQUESTS ADVICE RE U.S. ACCEPTANCE OF PROPOSED REVISIONS, HOPEFULLY BY MAY 25. ACTION REQUESTED: U.S. RESPONSE RE PROPOSED REVISIONS. END SUMMARY.

2. GENERAL REVISIONS:

A. AGENCY PREFERS TO USE TERM "SPECIAL FISSIONABLE MATERIAL" IN LIEU OF "SPECIAL NUCLEAR MATERIAL" THROUGHOUT TEXT WHERE LATTER IS USED, SINCE THE FORMER IS LIMITED OFFICIAL USE

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DEFINED IN AGENCY STATUTE. THIS OCCURS AT END OF SIXTH PREAMBULAR PARA WHERE IT NEED ONLY BE MENTIONED ONCE INSTEAD OF TWICE, I.E. "...ELIGIBLE TO BENEFIT FROM THIS GIFT OFFER OF SPECIAL FISSIONABLE MATERIAL; AND". THIS ALSO OCCURS IN: ARTICLE VI. 3.A (FIRST LINE); ARTICLE VI. 3.C (THIRD LINE); AND IN ARTICLE VI. 4 (FIRST LINE).

B. FOLLOWING THE DEFINITION OF "SUPPLIED MATERIAL" (SEE ALSO PARA 6 BELOW), AGENCY PREFERS TO USE THAT TERM WHERE APPLICABLE THROUGHOUT TEXT. THIS OCCURS IN ARTICLE III. 1 (LAST LINE, IN LIEU OF "FUEL ELEMENTS"); ARTICLE IV. 1 (FIFTH LINE, IN LIEU OF "SUPPLIED ENRICHED URANIUM"); ARTICLE V (FOURTH LINE, CHANGE "SUCH MATERIAL" TO "THE SUPPLIED MATERIAL", AND IN NINTH LINE, ADD "SUPPLIED" BEFORE "MATERIAL"); AND IN ARTICLE VI. 1 (DELETE "NUCLEAR" IN FIRST AND THIRD LINES).

C. FOLLOWING DEFINITIONS OF GOM AND USG, IT IS IMPORTANT TO DISTINGUISH THROUGHOUT SUBSEQUENT TEXT WHEN REFERRING TO THE COUNTRY CONCERNED INSTEAD OF THE GOVERNMENT CONCERNED. IN THIS CONNECTION, ADD "OF AMERICA" AFTER "UNITED STATES" IN FIRST AND EIGHTH LINES OF ARTICLE IV. 1 AND IN FOURTH LINE OF ARTICLE IV. 2, CHANGE "U.S." TO "UNITED STATES" IN THIRD LINE OF ARTICLE VI.3, AND CHANGE "MEXICO" TO "THE UNITED MEXICAN STATES" IN LAST LINE OF SECOND PREAMBULAR PARA AND IN LINES 4 AND 8 OF ARTICLE IV. 2.

3. SINCE AGENCY CAN ACCEPT OFFERS SUCH AS RESEARCH REACTORS AND FUEL COVERED BY THIS AGREEMENT ONLY FROM GOVERNMENTS, FIRST AND SECOND LINES OF SECOND PREAMBULAR PARA SHOULD BE REVISED TO READ AS FOLLOWS: "WHEREAS THE GOVERNMENT OF THE UNITED STATES OF AMERICA (HEREINAFTER CALLED THE "UNITED STATES") ON BEHALF OF OREGON STATE UNIVERSITY (HEREINAFTER CALLED THE "UNIVERSITY") HAS LIMITED OFFICIAL USE

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OFFERED TO ..." (NOTE THAT USG IS THEN DEFINED IN THIS PARA INSTEAD OF IN FOURTH PREAMBULAR PARA).

4. AGENCY PREFERS FOLLOWING FORMULATION FOR FIRST FOUR LINES OF FOURTH PREAMBULAR PARA: "WHEREAS UNDER THE AGREEMENT FOR COOPERATION BETWEEN THE AGENCY AND THE UNITED STATES CONCLUDED ON 11 MAY 1959, AS AMENDED (HEREINAFTER CALLED THE "COOPERATION AGREEMENT), THE UNITED STATES UNDERTOOK..." (CHANGE IS EDITORIAL/STYLISTIC)

5. INSERT "CITY" AFTER "MEXICO" IN LINE 2 OF ARTICLE I.1 FOR ACCURACY.

6. AGENCY PREFERS TO DEFINE "SUPPLIED MATERIAL" EARLIER IN AGREEMENT THAN ARTICLE III.2, SINCE THIS TERM IS ALSO USED IN PARAS BEFORE LATTER PARA AS CURRENTLY DRAFTED WITHOUT BEING DEFINED. ACCORDINGLY, AGENCY SUGGESTS INSERTING FOLLOWING LANGUAGE AFTER "...FUEL ELEMENTS THEREFOR"

IN LINE 3 OF ARTICLE I.3: "AS SPECIFIED IN ARTICLE III.2
(HEREINAFTER CALLED THE "SUPPLIED MATERIAL"). (LATTER
PHRASE WOULD THEN BE DELETED FROM ARTICLE III.2).

7. AGENCY PREFERS DELETION OF FIRST SENTENCE OF
ARTICLE V PLUS THE WORD "ACCORDINGLY", AT BEGINNING OF
SECOND SENTENCE, SINCE THAT LANGUAGE IS UNNECESSARY AND
PATRONIZING. AGENCY ALSO SUGGESTS FIFTH LINE OF THAT
ARTICLE BE REVISED TO READ "...SUPPLIED MATERIAL TO
MEXICO , ITS AGENT OR ANY PERSON UNDER MEXICAN..."
(CHANGE IS EDITORIAL/STYLISTIC).

8. IN ARTICLE VI.3.C, AGENCY PROPOSES CHANGING "UTILIZED"
IN THIRD LINE TO "USED" TO BE CONSISTENT WITH LANGUAGE
IN UNDERTAKING, AND CHANGING "LISTED IN" IN FIFTH LINE
TO "SUBJECT TO" FOR ACCURACY.

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9. RE ARTICLE VI.3.D, AGENCY POINTS OUT THAT IT CANNOT
GIVE UP ITS PREROGATIVES OF ARTICLE XII OF THE STATUTE
AND SINCE PROJECT IS ESTABLISHED BY AGENCY AND REACTOR
AND FUEL ARE TRANSFERRED THROUGH AGENCY, IT WOULD BE IN-
APPROPRIATE TO GIVE THE U.S. THE RIGHT TO REQUIRE THEIR
RETURN WITHOUT INVOLVING AGENCY IN THIS PROCESS. ACCORDINGLY,
AGENCY PROPOSES REVISING LANGUAGE AFTER "PARAGRAPH 1 OF
THIS ARTICLE" IN FIFTH LINE TO READ AS FOLLOWS: "THE UNITED
STATES SHALL REPORT ANY SUCH NON-COMPLIANCE OR FAILURE

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TO SECSTATE WASHDC PRIORITY 9116
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TO THE DIRECTOR GENERAL OF THE AGENCY WHO SHALL FORTHWITH TRANSMIT THE REPORT TO THE BOARD OF GOVERNORS, WHEREUPON THE BOARD MAY CALL FOR THE RETURN OF THE SUPPLIED REACTOR AND THE SUPPLIED MATERIAL AND MAY TAKE FURTHER MEASURES IN ACCORDANCE WITH ARTICLE XII. C OF THE STATUTE OF THE AGENCY". MISSION BELIEVES THIS IS AN ACCEPTABLE SOLUTION.

10. IN ARTICLE XI.1, AGENCY PROPOSES CHANGING "TERMS AND CONDITIONS" IN THIRD LINE TO "PROVISIONS " (EDITORIAL/STYLISTIC) AND INSERTING (FOR ACCURACY) FOLLOWING LANGUAGE AFTER" RECOMMENDATIONS OF THE AGENCY" IN FOURTH LINE: "FOR THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL, SET FORTH IN DOCUMENT..." (WORD "IN" BEFORE "INFCIRC/225" WOULD BE DELETED). ALSO, AGENCY SUGGESTS DELETING "AGREED UPON" IN FIFTH LINE AND ADDING "TO BE MUTUALLY AGREED UPON". (EDITORIAL/STYLISTIC).

1. AGENCY ALSO PREFERENCES TO ADD WORD "ANY" BEFORE "DECISIONS" AT BEGINNING OF ARTICLE XII. 1 (EDITORIAL/STYLISTIC.)

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12. AGENCY UNABLE ACCEPT FINAL PARA IN ARTICLE XII RE TERM OF AGREEMENT, SINCE AGENCY TAKES POSITION THAT ALL OF ITS PROJECT AGREEMENTS CONTINUE INDEFINITELY, AND AGENCY DOES NOT WANT TO ESTABLISH PRECEDENT OF EXPLICITLY PROVIDING A MECHANISM FOR TERMINATION OF SUCH AGREEMENTS. FYI MISSION BELIEVES IT UNDESIRABLE IN ANY EVENT TO PROVIDE FOR TERMINATION WITHOUT ALSO PROVIDING FOR GOC/1621 PRINCIPLES OF CONTINUATION OF APPLICATION OF AGENCY SAFEGUARDS ON ITEMS LISTED IN INVENTORY. END FYI.

13. MISSION BELIEVES ALL OF AGENCY'S PROPOSED REVISIONS DESCRIBED ABOVE DO NOT MATERIALLY ALTER THE SUBSTANCE OF WHAT WE ARE SEEKING AND ACCORDINGLY, WE RECOMMEND U.S. ACCEPTANCE.

14. RE PARA 7 RETEL, WE HAD ASSUMED (PERHAPS IN ERROR) THAT INTRODUCTION OF FALL-BACK SAFEGUARDS CONCEPT WOULD MAKE THIS AGREEMENT IN SUBSTANCE MORE ON A PAR WITH OUR BILATERAL AGREEMENTS FOR COOPERATION, WHICH ARE SIGNED JOINTLY BY DEPT. AND ERDA REPRESENTATIVES FOR USG RATHER THAN BY

ERDA ON BEHALF USG, AND THAT WE MIGHT THEREFORE WISH TO HAVE IT SIGNED FOR USG INSTEAD OF FOR ERDA ON BEHALF OF USG. WE HAVE NO RPT NO PARTICULAR PREFERENCE SINCE WE BELIEVE BOTH WOULD BE EQUALLY VALID IN TERMS OF PRACTICAL IMPLEMENTATION. ACCORDINGLY, WE DEFER TO WASHINGTON'S DECISION ON THIS ASPECT OF MATTER.

15. RE PARA 6 REFTL, WE DID NOT RPT NOT CONSIDER IT NECESSARY TO RAISE FALL-BACK ALTERNATIVES FOR ARTICLE VI.3, SINCE AGENCY WAS WILLING TO ACCEPT OUR FIRST PREFERENCE. IT MAY BECOME NECESSARY TO CONSIDER THESE ALTERNATIVES, HOWEVER, ONCE AGENCY BEGINS NEGOTIATING WITH GOM. IF U.S. HAS ANY FURTHER VIEWS ON ARTICLE VI. 3.C AS SUGGESTED PARA 6 REFTL, THESE SHOULD BE PROVIDED ASAP AS WELL.

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16. PLEASE PROVIDE U.S. VIEWS BY MAY 25 IF POSSIBLE, SINCE AGENCY DESIRES AGREED TEXT BETWEEN US BEFORE APPROACHING GOM AGAIN. STONE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
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Control Number: n/a
Copy: SINGLE
Sent Date: 18-May-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
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